

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SNELLINK, .  
Plaintiff, . Case No. 11-cv-02164  
vs. . Newark, New Jersey  
UNIVERSAL TRAVEL GROUP, INC., . March 24, 2014  
et al., .  
Defendant. .

TRANSCRIPT OF TELECONFERENCE  
BEFORE THE HONORABLE MADELINE COX ARLEO  
UNITED STATES MAGISTRATE JUDGE

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1 (Commencement of proceedings at 1:04 P.M.)

2

3 THE COURT: This is Judge Arleo. You're on the  
4 record in my courtroom in Snellink versus Universal Travel  
5 Group.

6 Could I have appearances, please?

7 MR. ROSEN: This is Laurence Rosen for the  
8 plaintiff.

9 MR. ZELICHOV: Good afternoon, Your Honor, Richard  
10 Zelichov, along with my colleague Christina Costley on behalf  
11 of UTG, Jiangping Jiang, and Jing Xie.

12 THE COURT: Okay. Is that everyone?

13 MR. ROSEN: Yes, Your Honor.

14 THE COURT: Okay. A couple of issues that we have  
15 to address today. And let's talk first with the motion of  
16 alternative service, and that is a motion that has been filed  
17 by the plaintiff. And as I understand it, there is a request  
18 to utilize alternative service as set forth in Rule 4(f)(3).  
19 And that rule provides that -- addresses service on an  
20 individual in a foreign country. And it provides that, one,  
21 service should be made by any internationally agreed means of  
22 service that is reasonably calculated to give notice, such as  
23 those authorized by the Hague Convention or the service  
24 abroad of judicial and extrajudicial documents, subsection 3  
25 says, by other means not prohibited by international

1 agreement as the court orders.

2 I think there's a consensus here that as to -- as  
3 to what the Hague Convention provides. There's agreement  
4 that China is a signatory to the Hague Convention. And China  
5 has specified through that Convention what service is  
6 permitted. And the case law interpreting service on Chinese  
7 nationals has discussed the Hague Convention as it relates to  
8 China. And I think the parties agree that China objects to  
9 service by postal channels and by private couriers.

10 So what happened here was the plaintiff utilized  
11 the Hague Convention and consistent with the Hague Convention  
12 used -- attempted to serve the defendant, Mr. Wang, through  
13 the Chinese officials. And set forth and attached to a  
14 certification of counsel filed as Document Number 89-1 and  
15 the attestation, that says, quote, the addressee refused to  
16 accept the documents.

17 And that has prompted the plaintiffs to file this  
18 motion for alternative service and plaintiff's request that  
19 they be allowed to effect service of process by two means.  
20 And the first one, I'm not -- I want to hear from plaintiff's  
21 counsel about it -- by leaving a -- leaving the summons with  
22 Mr. Wang on the floor in front of his apartment. That's the  
23 sense that I -- that's what's set forth in the papers.

24 And let's start with that one, because here's my  
25 concern. My concern is that if we're going to utilize

1 service pursuant to subsection 3 of 4(f), it has to be by  
2 means not prohibited by international agreement. We know  
3 that postal channels and couriers are banned. They're not  
4 authorized.

5 So wouldn't this alternate service by leaving a  
6 summons on the floor by, I guess, by a courier, fly in the  
7 face of China's objection to service by courier?

8 MR. ROSEN: Yes, if we used a courier, then it  
9 would -- it would, Your Honor.

10 In the letter from -- we used the Hague, and we  
11 went through the Chinese Ministry of Justice to serve him.  
12 And so the -- the person from the Ministry of Justice went to  
13 his -- I don't recall -- his office, but he presented him  
14 with the --

15 (Simultaneous conversation)

16 THE COURT: Was it at his -- was it at his office  
17 or his home?

18 MR. ROSEN: I can't remember off the top of my  
19 head. I can look and see what it says.

20 But the important thing is that he was presented  
21 with the documents, and he said, he -- you know, said I don't  
22 want to take them. You know.

23 THE COURT: Let me stop you for a minute. Let me  
24 stop you for a minute.

25 I have an affidavit, an attestation that says the

1 addressee refused to accept the documents. I don't see  
2 anything that says that they had a conversation and he said  
3 I'm not going to take it. I just have --

4 MR. ROSEN: No, no, I mean, I think -- I  
5 think that's what -- what was written, so the Chinese  
6 Ministry of Justice, they give us a return of service, and on  
7 it, then they write -- they write, you know, what happened  
8 and what went wrong.

9 THE COURT: So all we know is what -- so I just  
10 want to make sure we have the facts clear. The only fact  
11 that I saw from the Chinese government was the line that says  
12 the addressee refused to accept the documents.

13 Right?

14 MR. ROSEN: I'll -- it says -- it says here, the  
15 addressee refused to accept the documents.

16 THE COURT: Right, so the -- I don't have anything  
17 about the --

18 MR. ROSEN: I mean, what might be what happened is  
19 that -- is that he was presented with the documents and he  
20 wouldn't take them. At least, you know --

21 (Simultaneous conversation)

22 THE COURT: All right. Let me stop you. I've got  
23 to stop you for a minute.

24 What's the basis of your belief?

25 MR. ROSEN: Well, that's what it says -- refused to

1 accept the documents. Also we have -- we have  
2 conversations -- I don't recall if someone specifically  
3 called the Ministry of Justice and discussed it with them or  
4 not. That, I don't -- that, I'm not sure about. But my  
5 understanding is --

6 (Simultaneous conversation)

7 THE COURT: Well, if he did -- let me stop you for  
8 minute. If he did, it's not before me, because I have --

9 MR. ROSEN: Yeah.

10 THE COURT: -- nothing, any certifications or sworn  
11 statements of anyone in the Chinese Ministry of Justice. I  
12 have one line that could be interpreted in different ways  
13 that the addressee refused to accept the documents. That's  
14 it.

15 So --

16 MR. ROSEN: Right.

17 THE COURT: -- let's -- let's talk -- let me --  
18 let's focus back on my question. How do you -- what is your  
19 proposal. Is it -- you're going to have a courier leave it  
20 in front of his door? Tell me what you want me to authorize.

21 MR. ROSEN: One thing you could do, Your Honor, is  
22 we could give it back to the Ministry of Justice, have them  
23 do the same thing, present the individual with the documents,  
24 and if he refuses, just leave them there. Right? Just leave  
25 them at his -- at the doorstep; right? Or wherever he

1 happens to be when he's served, so that he doesn't have to  
2 take it -- take it in his hands. I mean that's one  
3 possibility.

4 But I think we're dealing with a person who's not  
5 cooperative to some -- you know -- the person knows what's  
6 happening --

7 (Simultaneous conversation)

8 THE COURT: Let me stop --

9 (Simultaneous conversation)

10 THE COURT: Let me stop you for a minute.

11 MR. ROSEN: Yes.

12 THE COURT: So if you come back to me and you have  
13 an affidavit from someone from the Chinese Department of  
14 Justice that said more detail, like you said, I opened the  
15 door, it was him, I -- it was a male meeting his description,  
16 he refused to accept it, so I left it at his door, that would  
17 be -- that -- that, you know, arguably that may not offend  
18 the Hague Convention because it was service effectuated by a  
19 person affiliated with the Chinese ministry.

20 I'm not going to authorize that in advance, but I  
21 will -- because I don't know what they're going to do. I  
22 don't know how you're going to communicate it to me that --  
23 that -- through an affidavit or otherwise, that a person at  
24 the Chinese Ministry of Justice would agree to do. They  
25 would say, we'll leave it at the door, and they will tell me



1 that he met his description, he was there, and then he --  
2 then he refused to accept it.

3           Because that's the way it would be -- because what  
4 I have to be concerned about under alternate service is  
5 that -- is it likely to give him fair notice of the  
6 complaint. And that would give me fair notice if it was --  
7 if the Chinese -- and not offend the Hague Convention. But  
8 there has to be something that convinces me that he lived  
9 there and that you left it with him, and therefore if he just  
10 closes door and you leave it on his doorstep and he's inside,  
11 it's reasonably calculated to give him notice of this  
12 complaint. If he doesn't live there anymore and the person  
13 who opened the door is not him, because he left, the fact  
14 that he is -- just like in this country, when you think about  
15 service within the jurisdiction, you have to have some  
16 good-faith basis to believe that the place you're serving a  
17 defendant is where he resides. Right?

18           MR. ROSEN: Yes, Your Honor.

19           THE COURT: So I would need to know that, and if  
20 you could reasonably assure me that he lives there, that they  
21 tried to serve him and he closed the door on him and they  
22 left it at -- and the Chinese official left it at his door,  
23 that may comport with section (f).

24           But I'm not there yet. So you need re- -- what --  
25 here's -- here's what I'm inclined to do. I'm not inclined

1 to let you -- because I'm not sure what you want to do. I'm  
2 not inclined to just say go leave a copy at his door. There  
3 would have to be a totality of circumstances that would give  
4 me confidence that that method doesn't offend the Hague  
5 Convention and is reasonably calculated to give notice of the  
6 complaint.

7           So for instance, having a courier leave it at the  
8 door, which is what you've -- what you really -- that's why I  
9 started out by asking what are you proposing. Courier would  
10 offend the Hague Convention. The mail -- a mailing would  
11 offend the Hague Convention.

12           So you -- you know, I'm going to deny your request  
13 as -- as articulated in your papers, but not foreclosing the  
14 possibility that you can make a second application for me to  
15 deem that good service, depending on the circumstances.

16           MR. ROSEN: Yes, Your Honor. I understand.

17           THE COURT: Let me ask -- let me ask defendants,  
18 what would your -- if -- just -- would you have any objection  
19 if the Ministry of Justice served him in the -- in the manner  
20 that I just articulated?

21           MR. ZELICHOV: Your Honor, I think it would depend  
22 on whether -- we'd have to look back at the provisions of the  
23 Hague Convention again and China's various objections to them  
24 to determine, you know, would what -- if what plaintiff  
25 does -- does offend those provisions.

1           And that is not something I can answer as a  
2 hypothetical at this point in time.

3           You know, I -- it's hard to speak for Mr. Wang,  
4 given that I don't represent him, I have never spoken with  
5 him, and I can't say as to whether he would object. But --  
6 but, you know, it's certainly a step in the right direction.

7           THE COURT: Right. And I guess my concern is about  
8 authorizing it in advance. Usually folks will ask for  
9 alternative service in advance.

10           But what makes this unusual, what we just talked  
11 about -- and I'll let plaintiff talk a little bit further --  
12 I'm not -- I don't think it's appropriate for me to authorize  
13 an alternative means of service that requires the Chinese  
14 government to do something which they may not be willing to  
15 do, because there is nothing in the Hague Convention that  
16 speaks to this, that a -- it talks to, from what I can  
17 understand, that you can leave it -- that -- that service has  
18 to be through someone from the Ministry of Justice, and if  
19 they -- in an ideal situation, they open the door, they  
20 accept it, service is completed.

21           But I'm not aware of anything that -- which the  
22 Chinese government would -- someone from the Ministry of  
23 Justice would be empowered to leave it at his door and give  
24 an attestation to that effect.

25           So --

1 (Simultaneous conversation)

2 MR. ROSEN: Your Honor.

3 THE COURT: Go ahead.

4 MR. ROSEN: I think the problem in China is, first  
5 of all, it's an extremely large country, you know, maybe four  
6 or five times larger than ours. And each province does  
7 things a little bit differently. And the service was  
8 effected from the provincial ministry court system. And so  
9 we've -- we've had situation -- we've had a lot of these  
10 Chinese cases, and we've had situations in which the -- the  
11 Ministry of Justice would consider it good service by just  
12 leaving it on his -- you know, going in his office and  
13 leaving it on his desk, whether or not he -- he formally  
14 accepts it or not -- this particular process server from the  
15 ministry, you know, wrote down what he wrote and didn't just  
16 leave it with him.

17 But what really -- you know -- is good enough, just  
18 that he would be here, if he went to a corporation -- you  
19 know, left it with the -- with the, you know, person at the  
20 front desk.

21 So I -- you know, what I'd like to do is just give  
22 us a chance to serve it again and -- we'll call the ministry  
23 ahead of time and ask them to just leave it with -- with him  
24 without, you know, a formal acceptance or rejection, as an  
25 option, and see if that satisfies due process.

1           THE COURT: Okay. My only -- my only question is  
2 is that something that we should -- if that's your plan to  
3 have the person from the Chinese ministry leave it -- serve  
4 it and if he doesn't answer, leave it at his door, maybe  
5 that's something that's a narrow request should be briefed --  
6 you should get authority to do that in advance rather than  
7 coming in after the fact.

8           Do you know what I'm trying to say? Because I  
9 think that --

10          (Simultaneous conversation)

11          MR. ROSEN: Yes --

12          (Simultaneous conversation)

13          THE COURT: -- that -- is -- the way the rule is  
14 written is that you're requesting an alternate service.  
15 Right? So that is slight- -- that maybe an alternative to  
16 what is provided by the Hague Convention. You can take the  
17 risk of serving them and have them object to service. But  
18 you could also make a -- make a more narrow motion focused on  
19 this very issue, and that -- that way defendant could --  
20 could -- if maybe they wouldn't object to it, maybe they  
21 would, but then they would at least articulate their  
22 objections in advance of you going through the -- through the  
23 mechanics of service, again, through the Chinese ministry.

24          MR. ROSEN: Well -- well -- service, but to effect  
25 service in China, you -- other than email, which I've seen

1 courts approve, but we don't have his email address, it'd  
2 have to be through the Ministry of Justice, generally.

3 THE COURT: I can't -- I can't -- I'm not going to  
4 opine on all the ways that someone could potentially serve  
5 someone in China, but I will say this, I think the case that  
6 was noted by the defendants, Intercontinental Industries v.  
7 Luo, which is found at F. Supp. 2d -- 2011 WL 221880 (C.D.  
8 Cal. 2011), the court says in light of China's objection of  
9 service by postal channels, the permanent bureau's position  
10 that private couriers should be treated as postal car- --  
11 channels under the Hague Convention and other courts'  
12 treatment of private couriers as postal channels, the court  
13 cannot authorize service to or through a commercial carrier  
14 pursuant to 4(f)(3), as it is prohibited by an international  
15 agreement.

16 So what I could tell you is whatever means you  
17 propose has -- cannot be -- cannot be prohibited by the Hague  
18 Convention, number one; and number two, has to be reasonably  
19 calculated to give him notice of the lawsuit. Those are the  
20 two things that Rule 4(f)(3) requires me to -- to make sure  
21 are present with respect to any alternative service.

22 So I can't -- I'm not going to give you an opinion  
23 on all the different means, but what you propose, which is  
24 not -- which is vague, just by leaving it at a door, could  
25 potentially violate the Hague Convention.

1                   So I can't --

2                   (Simultaneous conversation)

3                   MR. ROSEN: Well, Your Honor, I'm not suggesting we  
4 just leave it at a door. I'm suggesting we have the Ministry  
5 of Justice try -- try again to serve it.

6                   THE COURT: Okay. Let me stop -- let me stop you  
7 for a minute. Okay.

8                   That's not what your papers say.

9                   MR. ROSEN: I know that.

10                  THE COURT: There's nowhere in your papers where  
11 you say that. So your motion is a broad-based motion to  
12 leave the papers at his door. That's denied.

13                  If you want to --

14                  MR. ROSEN: Right.

15                  THE COURT: -- renew your motion and make it more  
16 narrowly tailored, as we just talked about on the record, I'd  
17 be happy to reconsider that, and then I'll give defendants an  
18 opportunity to oppose it, just like we did this motion.

19                  But as framed, your motion is denied. And your  
20 second -- your alternative motion, let's talk about that for  
21 a minute, serving him through the company, the problem with  
22 that is that in this case, he's a former employee, and the  
23 company has said they've had no contact with him. So to  
24 serve him by serving his company, I'm not satisfied would  
25 also serve notions of due process.

1           So that's -- unless you want to be heard on it, but  
2 I think the law's pretty clear there, that if he's not a  
3 present officer, and if there's no communication with him --  
4 I mean the few cases that allow it, it's when there is --  
5 it's a former -- there's maybe a former officer, and  
6 there's -- he continues to have regular contact with counsel  
7 and the company.

8           That is not the case here.

9           So --

10          MR. ROSEN: Yes, Your Honor, I understand.

11          THE COURT: You got it? So what I -- what I'd  
12 suggest you do is I'm going to deny this without prejudice.  
13 You can renew it as quickly as you want to. And -- and then  
14 I'll give defendants an alt- -- an opportunity to respond,  
15 and then we'll take it from there. Okay?

16          MR. ROSEN: Yes, Your Honor.

17          THE COURT: Okay.

18          Now, one other housekeeping matter, guys, and that  
19 has to do with the motion to dismiss. Tell me about what's  
20 going on with the SEC enforcement action.

21          MR. ZELICHOV: Your Honor, this is Richard Zelichov  
22 on behalf of UTG and Jiangping Jiang.

23          The SEC enforcement action was brought at --  
24 settled action and is done at this point in time. I think,  
25 as you see, the parties settled -- the defendants settled



1 without admitting or denying any of the allegations in the  
2 complaint. And there's nothing further occurring on that.

3 THE COURT: Is there anything as a result of  
4 that -- as a result of that enforcement action, which would  
5 warrant some amendments to the present complaint?

6 MR. ROSEN: -- judicial notice, but I think that  
7 there are allegations in the complaint that if -- if request  
8 for judicial notice was not granted, we would add to our  
9 complaint. There's a number of things such as the -- what's  
10 the word -- but shall we say the diversion of about --  
11 million dollars of offering proceeds to oversee bank accounts  
12 that was alleged in the complaint. There was -- regarding  
13 the use of proceeds. There was misrepresentations as to the  
14 ownership of the subsidiaries and as to the improper  
15 consolidation of revenue from subsidiaries.

16 So there's number of allegations that we will use  
17 in an amended complaint related to the SEC complaint.

18 THE COURT: Okay.

19 MR. ZELICHOV: Your Honor --

20 THE COURT: Yes.

21 MR. ZELICHOV: -- this is Mr. Zelichov on behalf of  
22 the defendants.

23 I mean, I think what we have is I mean, I think  
24 plaintiff has essentially acknowledged thus far that the  
25 amended complaint that was -- is sort of at issue on the

1 motion to dismiss, doesn't state a claim, because they've  
2 supplemented that pleading four times, you know, since  
3 defendants filed their motion to dismiss, including with the  
4 sort of request for judicial notice of the SEC complaint,  
5 which I must -- I must put on the record is -- those are just  
6 assertions by the SEC. They were not proven. They were  
7 not -- no one admitted to them. It's in the form of a  
8 settlement.

9 But I think the -- the -- what has resulted from  
10 this is that we're kind of playing with a puzzle at this  
11 point in time where we don't actually know what we're really  
12 shooting at.

13 I think the right result of that, our motion to  
14 dismiss, the one that's presently outstanding, should be  
15 granted, and then plaintiffs should file a -- a motion to  
16 amend under Rule 15 so that they can explain what a further  
17 amended complaint might include. And then we can choose  
18 whether to, you know, allow -- consent to them filing an  
19 amended complaint or choose to oppose their motion to amend.  
20 And then, you know, we can -- if the Court were to grant the  
21 motion to amend, that we could then determine whether we  
22 wanted to move to dismiss that amended complaint.

23 THE COURT: Let me save you the trouble, because  
24 I've discussed this case with Judge McNulty, and he is  
25 inclined to terminate the motion to dismiss, direct

1 | plaintiffs within 10 days to file an amended complaint that  
2 | does two things: One, it addresses all these new  
3 | developments with respect -- and the factual basis -- new  
4 | facts that have come to light since the SEC enforcement  
5 | action; and, two, cleans up the complaint, legally and just  
6 | in terms of breadth. And makes it -- and addresses some of  
7 | the deficiencies, if there are any, that defendants have --  
8 | have pointed out. But to streamline the complaint, make it  
9 | more responsive, more carefully pled, and to address all the  
10 | SEC developments. And when that new complaint is filed,  
11 | then -- then defendants can refile their motion to dismiss on  
12 | a regular schedule.

13 |           That's what Judge McNulty has asked me to convey to  
14 | you, and that's why I'm conveying it.

15 |           So is it possible for plaintiffs to get another  
16 | complaint filed by -- within two weeks? Or do you need more  
17 | time?

18 |           MR. ROSEN: How much time, Your Honor? I couldn't  
19 | hear.

20 |           THE COURT: I was going to say 14 days? Two weeks?  
21 | 10 business days?

22 |           MR. ROSEN: Can I have 30 days, because I would  
23 | like to get some information out of China that might take  
24 | more than two weeks.

25 |           THE COURT: For the amended complaint?

1 MR. ZELICHOV: Your Honor?

2 THE COURT: For the amended --

3 MR. ROSEN: Yeah, I would like to try to pull some  
4 regulatory filings, and it sometimes takes more than two  
5 weeks. It just depends, because, you know, China's a --  
6 it's -- can be complicated to get things done sometimes.

7 THE COURT: Okay.

8 MR. ZELICHOV: Your Honor, we wouldn't object to  
9 plaintiffs having 30 days.

10 THE COURT: Okay. So why don't we say, then, by  
11 the end of the month. Why don't we say by May 1? Okay?

12 MR. ROSEN: Yes, Your Honor.

13 THE COURT: And then I'll do --

14 (Simultaneous conversation)

15 MR. ROSEN: -- we may add and subtract some  
16 defendants, based on some -- particularly, the PC- -- the  
17 PCAOB order -- I don't know if you're familiar with that. It  
18 was a -- the Public Company Accounting Oversight Board issued  
19 the order of sanctions against auditor. And we were planning  
20 to make a motion to amend to add the auditors, so perhaps we  
21 can just add the auditor now.

22 THE COURT: Okay. And would it be fair to give  
23 defendants 30 days to file a motion -- 30 days after the  
24 mo- -- the amended complaint is filed?

25 MR. ROSEN: Yes, Your Honor, we have no objection

1 to that.

2 THE COURT: Okay. If you need additional time,  
3 guys, just send me a letter. I'm happy to give you an order  
4 giving you some time if you -- if you will find yourself  
5 falling behind on the schedule.

6 So that'll be the schedule for filing the amended  
7 complaint and the motion to dismiss.

8 In the meantime, I'll send -- I'll sign an order  
9 denying the motion for alternate service without prejudice.  
10 That can be renewed at any time consistent with the  
11 conversation we had today on the record.

12 Okay?

13 MR. ROSEN: Yes, Your Honor.

14 THE COURT: All right, guys, good luck, have a  
15 nice --

16 (Simultaneous conversation)

17 MR. ZELICHOV: Thank you very much, Your Honor.

18 THE COURT: -- week. Take care. Bye-bye.

19 MR. ROSEN: Thank you, Judge.

20 (Conclusion of proceedings at 1:29 P.M.)

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## Certification

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11 I further certify that I am in no way related to any of  
12 the parties hereto nor am I in any way interested in the  
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18 s/ *Sara L. Kern*

April 2, 2014

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